IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

State of Rajasthan & Ors. v. Ashu Ram & Anr.

S.B.CIVIL WRIT PETITION NO.803/2002
under Article 226 of the Constitution of India.

Date of Order : 15th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rameshwar Dave, Dy.Govt.Advocate.
Mr. Sangeet Lodha, for the respondents.

BY THE COURT :

By this petition for writ a challenge is given to the order dated 4.10.2001 passed by Rajasthan Civil Services Appellate Tribunal (hereinafter referred to as "the Tribunal") in Appeal No.189/01, titled as Ashuram v. Indira Gandhi Nahar Pariyojna (hereinafter referred to as "IGNP"). By order dated 4.10.2001 learned Tribunal accepted the appeal preferred by respondent No.1 by setting aside the order dated 2.11.1999 passed by Chief Engineer, IGNP, Jaisalmer whereby the respondent appellant was reverted from the post of Sr. Carpenter to the post of Carpenter Gr.II and further an order was made to effect recovery from his pay for the amount said to be paid in excess.

Facts in brief necessary to be noticed for adjudication of present writ petition are as follows:

Respondent Ashuram by an order dated 1.1.1989 was promoted to the post of Sr. Carpenter w.e.f. 1.1.1989 in the pay scale of Rs.820-1520. At the time of promotion the respondent was holding the post of Carpenter Gr.II with semi permanent status in work-charged cadre. The promotion given to the respondent was withdrawn by the Chief Engineer, IGNP, Bikaner by an order dated 2.11.1999. Validity of the aforesaid order was challenged by Shri Ashuram by way of filing an appeal before the Tribunal and the same was accepted vide its order dated 4.10.2001. Learned Tribunal while accepting the appeal preferred by Shri Ashuram directed the Chief Engineer, IGNP, Bikaner to pass an order afresh after adhering the principles of natural justice.

The Chief Engineer, IGNP, Bikaner in compliance of the directions given by learned Tribunal passed an order dated 5.3.2001. By this order the respondent No.1 was ordered to be reverted to the post of Carpenter Gr.II by cancellation of order dated 10.2.1989. The Chief Engineer, IGNP, Jaisalmer also ordered for recovery of the amount said to be paid in excess to Shri Ashuram as a consequence of his promotion as Sr. Carpenter by order dated 10.2.1989.

Shri Ashuram challenged validity of the order dated 5.3.2001 by way of filing an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur (Circuit Bench, Jodhpur) and the same was accepted by order dated 4.10.2001, hence this writ petition is preferred by the petitioners.

The contention of counsel for the State is that the learned Tribunal erred while accepting the appeal preferred by the petitioners being failed to appreciate that Shri Ashuram was not possessing the qualification prescribed under the Rajasthan Work-charged Employees Rules, 1964 (hereinafter referred to as "the Rules of 1964") to hold the post of Sr. Carpenter. According to the petitioners the eligibility prescribed under the Rules of 1964 to hold the post of Sr. Carpenter is that the incumbent must possess five years experience as a Jr. Carpenter and he is also required to qualify a trade test. Shri Ashuram was neither have five years experience nor he qualified trade test when he was promoted to the post of Sr. Carpenter w.e.f. 10.2.1989. According to the petitioners Shri Ashuram (respondent No.1) was appointed as Carpenter Gr.II w.e.f. 2.11.1985, therefore, on the date of his promotion i.e. 10.2.1989 he was not possessing requisite experience and promotion was also accorded to him without holding any trade test.

Per contra, counsel for respondent Shri Ashuram stated that the respondent workman was possessing requisite experience at the time of his promotion as Sr. Carpenter. Counsel for the petitioners pointed out from service book of respondent No.1, photocopy of which is on record, that Shri Ashuram was granted semi permanent status w.e.f. 17.8.1985 after completing two years of service as a casual Carpenter Gr.II. According to him the date of initial appointment of Shri Ashuram is 17.8.1983 and not 2.9.1985 as stated by the petitioners. Counsel for the petitioners further stated that as the respondent No.1 has already worked for a period of about 15 years on the post of Sr. Carpenter, therefore, now it shall not be appropriate to revert him on the count that at the time of his promotion a trade test was not conducted by the employer. He also pointed out that the trade test as prescribed is of formal nature.

Heard counsel for the parties.

As stated above, the contention of counsel for the State is that the respondent No.1 was not having five years experience at the time of his promotion as Sr. Carpenter. From record it is quite clear that in fact the respondent No.1 was appointed as Carpenter in work-charged cadre with casual status in the year 1983. Semi permanent status was

subsequently given to him in the month of August, 1985. The status either of a casual workman or in semi permanent category does not make any difference as the requirement for promotion is five years practical experience to the post of Jr. Carpenter. The respondent No.1 was having more than five years experience as the date of his initial appointment is in the year 1983, therefore, at the time of promotion the respondent No.1 was not at all lacking experience as prescribed.

Another contention of the counsel for the State is that at the time of promotion no trade test was conducted as prescribed under the Rules of 1964, therefore, promotion of the respondent No.1 was dehore the Rules.

In my considered opinion, this contention of the counsel for the petitioners is absolutely misconceived. There is no violation of the Rules of 1964. It is true that the Rules of 1964 possess statutory force being framed under proviso to Article 309 of the Constitution of India, but the procedure and eligibility for recruitment is not part of the Rules of 1964. The same has been prescribed by the Government by administrative instructions. The violation of any administrative instructions cannot be said as the violation of statute. The promotion of the respondent No.1, therefore, is not at all in violation

of any statutory provision. At the most it can be said that the promotion of respondent No.1 was not made in consonance with the instructions given by the Government, same therefore is an irregularity but not an illegality. The respondent No.1, who has already worked as Sr. Carpenter for about 15 years and atleast for the period of about 12 years on the date the order reverting him was passed, no useful purpose shall now be served by permitting the petitioners to revert the respondent No.1 and then to proceed for holding trade test. The respondent No.1 has acquired sufficient experience to compensate the requirement of qualifying trade test.

In these circumstances, I do not find any illegality in the order giving promotion to the respondent No.1 and also in the order dated 4.10.2001 passed by the Tribunal.

In view of discussion above, the petition for writ fails and, therefore, the same is hereby dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.